

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

B
P/S

Docket
No. 74-1855

IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

—vs.—

LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH
JOY HODSON, VALERIE LYNN BROWN, MILDRED
COPEs, and BARBARA BROOME,

Defendants-Respondents.

Criminal No. 74-CR-26

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

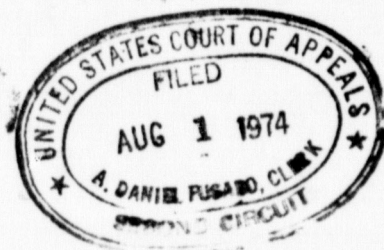
—vs.—

BARBARA BROOME,

Defendant-Respondent.

Criminal No. 74-CR-69

APPENDIX FOR APPELLANT,
UNITED STATES OF AMERICA



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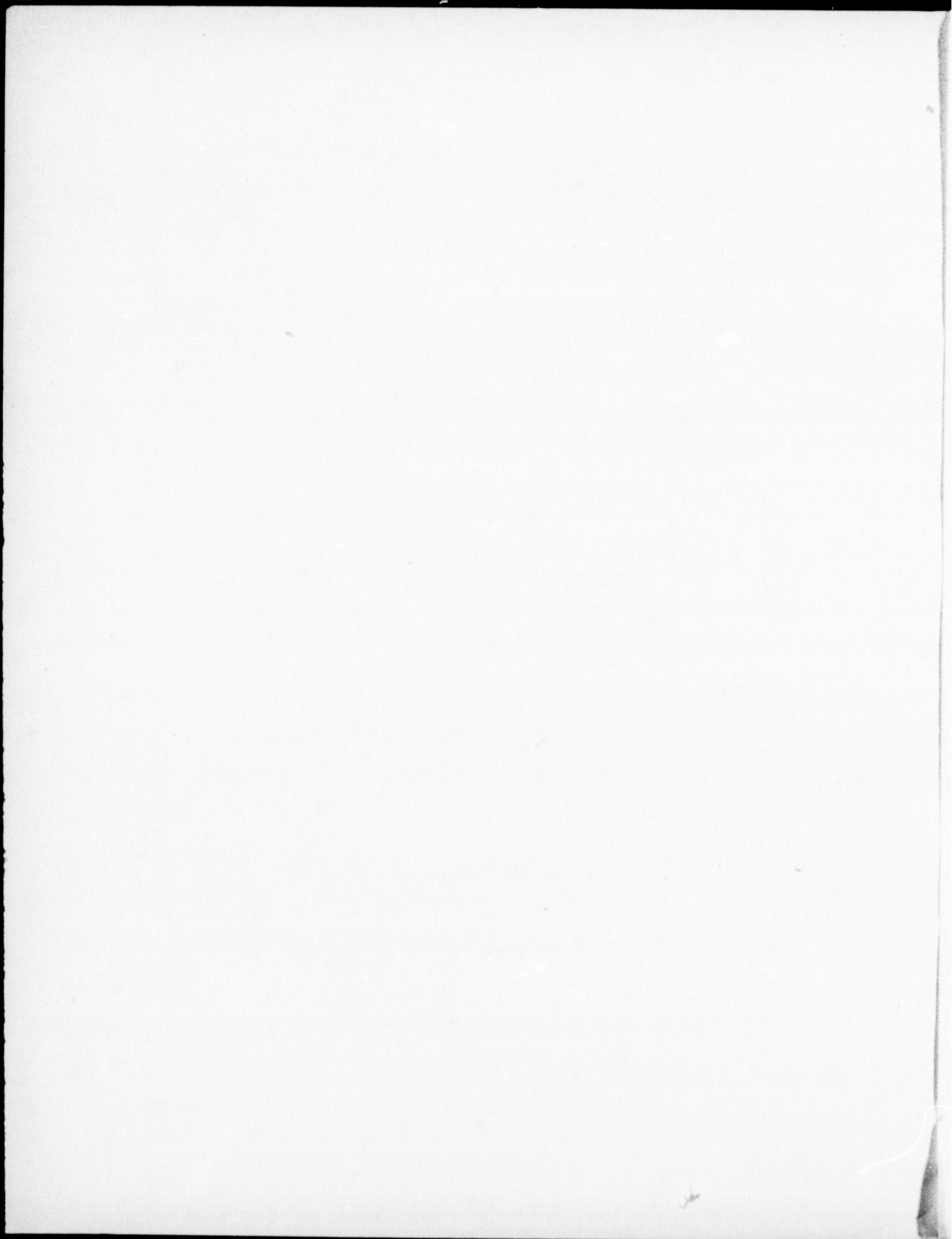
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PROCEEDINGS, dated June 4, 1974.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- UNITED STATES OF AMERICA, -
-
- - against -
-
- BARBARA BROOME -
-
- - - - -

The following proceedings took place
on the 4th day of June 1974, at the United
States District Court, Federal Building, Auburn,
New York, before HONORABLE LLOYD P. MacMAHON,
United States District Judge.

APPEARANCES:

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(Documents marked Government's Exhibits
1 and 2 for identification.)

THE COURT: Proceed.

MR. CHALENSKI: Your Honor, do you wish
the moving party to go first in this case?

THE COURT: I think the burden quickly
shifts to the Government, so why don't you go
forward, and he has charged this was involuntary--

MR. CHALENSKI: All right, I will call
Mr. George Den Haese.

A. GEORGE DEN HAESE
called as a witness on behalf of the Government
being first duly sworn was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. CHALENSKI:

Q Would you state your name for the record please?

A A. George Den Haese.

Q Are you employed by the United States Government?

A Yes sir.

Q In what capacity?

A I am a Special Agent for the United States Secret
Service.

Q Since when have you been so employed?

A Approximately four years, 1970.

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Q Did you have occasion on or about February 21, 1974 to arrest one Barbara Broome, defendant in this action?

A Yes sir, I did.

Q Can you describe to me the occasion where you arrested her?

A It was at her place of employment, I believe it was 248 Grant Avenue here in Auburn, the 4-H Farm and Home Improvement Building.

Q Did you have information that the defendant Broome was employed at that building?

A Yes.

Q Was that within the auspices of Cornell University?

A Yes sir.

Q At what time did you go to that building?

A It was approximately 11:30 or 11:35.

Q Under what authority was the arrest made?

A She had been indicted by a Federal Grand Jury and a warrant for her arrest had been issued.

Q Were you aware personally of the substance of that indictment at that time?

A I believe so, yes sir.

Q Could you tell me what happened when you entered that building?

A We were faced with a problem of finding where she

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was in the building, because it is a very large building. So we went to the receptionist and inquired as to where Miss Broome might be located, and she checked a moment and determined that Miss Broome was in a meeting, and she wrote a note and carried that with one or two others to that meeting room, as it was nearly time for a lunch break, and Agent DeJulio, the agent with me, accompanied myself and that lady to that room and we waited for Barbara to be notified out in the hall.

Q Subsequently Barbara was notified and came to you?

A Yes sir.

Q What did you do at that time with respect to Barbara Broome?

A We advised her that she was under arrest and that we would be asking her to come with us at this time.

Q What time was that?

A 20 minutes of 12:00, something like that, 11:40 I would guess.

Q Is that your best recollection of the time?

A Yes sir.

Q Would you have anything that would --

THE COURT: That is a.m. or p.m.?

THE WITNESS: A.M., Your Honor.

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BY MR. CHALENSKI:

Q Could you pin that time down further?

A 11:40 a.m. when we initially made contact with Miss Broome.

Q Did you advise her of her rights at that time?

A Yes, she was advised of her rights at that time.

THE COURT: What did you tell her. That is a conclusion. What did you say, what did she say?

THE WITNESS: We advised her that she was under arrest at that time, that she must understand her rights before we asked her any questions.

THE COURT: Did you tell her what her rights were?

THE WITNESS: According to our --

THE COURT: Tell me what you told her.

THE WITNESS: "You must understand your rights before we ask you any questions. You have the right to remain silent, anything you say could be used against you in court or other proceedings. You have the right to talk to a lawyer before we question you, and you also have that right to have him with you during questioning. If you cannot afford a lawyer and want one, one will be appointed by the court. If you decide to answer questions

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now, you can stop the questioning at this time and talk to a lawyer. You can also stop the questioning at anytime to talk to a lawyer."

THE COURT: What did she say?

THE WITNESS: She said she did, and the other agent paraphrased what I said to her.

MR. AVERY: Move to strike it out.

THE COURT: Yes.

BY MR. CHALENSKI:

Q Did you read Secret Service form 1737 to her at that time?

A No sir.

Q What subsequently did you do with the defendant Broome following the warning of her rights?

A We allowed her to gather up her personal effects and talk to her supervisor and explained where she was going, if she so desired, and she accompanied us to her vehicle so she might be able to secure it and get those things that she wanted from it and deposit things she didn't need into it. Her vehicle was secured and we departed the area at approximately 11:45 a.m.

Q To where?

A Our destination was the Bureau of Criminal Investigation of the New York State Police here in Auburn,

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New York, and we took her there for processing.

What time?

THE COURT: What agency are you with?

THE WITNESS: I am with the United States Secret Service, Your Honor.

THE COURT: How come you took her to the State Police?

THE WITNESS: Because they were cooperating investigating officers with us along with the postal authorities in this case.

THE COURT: Were you aware there was a Magistrate here in Auburn?

THE WITNESS: Yes, Your Honor.

BY MR. CHALENSKI:

Q Were there any reasons at all for taking her to the BCI headquarters?

A We had to take her photograph, her fingerprints, her personal history and several other forms that we normally take, and there were five other defendants being arrested simultaneously with Miss Broome, and we wanted to bring them to the Magistrate's Office together to avoid any undue confusion.

THE COURT: What was the charge?

THE WITNESS: The charge on the February

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21 arrest was 18 USC 405.

THE COURT: Which is forging and uttering?

THE WITNESS: Yes, and theft of mail, possession of stolen mail and conspiracy, Your Honor.

BY MR. CHALENSKI:

Q You transported Miss Broome, then, to the BCI headquarters, did you interview her at anytime during the time from her arrest until the time she was presented to the Magistrate?

A We began to interview her, according to Secret Service form 1737 --

Q (Interrupting) I show you Government's Exhibit 1 marked for identification, can you tell us what that is?

A Secret Service form 1737.

THE COURT: Whereabouts is the BCI headquarters in Auburn?

THE WITNESS: Approximately six miles from the place of Miss Broome's arrest?

THE COURT: Whereabouts?

THE WITNESS: On the west side of Auburn.

THE COURT: West side of Auburn?

THE WITNESS: It would be in that direction from where we are.

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THE COURT: Do I understand you arrested her on the Cornell campus?

THE WITNESS: No, Your Honor, at her place of employment, which is an extension of the Cornell University in Ithaca. They have a building here on 248 Grant Avenue, which is like an extension service.

THE COURT: I see, this is in Auburn?

THE WITNESS: In Auburn.

THE COURT: All right.

BY MR. CHALENSKI:

Q Did you read the defendant Broome that statement, Mr. Den Haese?

A Yes, we did -- I did.

THE COURT: Let's put it in evidence.

MR. CHALENSKI: We would like that on the record.

THE COURT: I suppose so, if it is important.

MR. CHALENSKI: I will introduce the document into evidence.

BY MR. CHALENSKI:

Q Did the defendant Barbara Broome sign that statement?

A Yes she did.

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Q Is that her signature appearing as Barbara Broome?

A Yes it is.

Q Did you read the waiver contained on that statement to the defendant?

A Yes sir, I did.

Q Did she also sign that?

A Yes she did.

Q Is there a date and time stated?

A Yes.

Q What is that?

A February 21, 1974, 12:08.

Q Is that 12:08 a.m. or p.m.?

A A.M.

Q Do you know of your own knowledge whether that was --

A (Interrupting) It was eight minutes after noon.

Q How do you know it was that time?

A Because my daily report reflects that.

Q Was that statement or warning to consent form witnessed by you?

A Yes.

MR. AVERY: Does this form have an exhibit number?

MR. CHALENSKI: Government's Exhibit No. 1 marked for identification.

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MR. AVERY: I object to any further questioning until the exhibit is in evidence.

THE COURT: Sustained.

MR. CHALENSKI: Your objection is to any further --

THE COURT: The objection is you are talking about the contents of a document not yet in evidence.

MR. CHALENSKI: Your Honor, I introduce the statement.

THE COURT: The very point I made five minutes ago.

MR. CHALENSKI: May I introduce this in evidence?

MR. AVERY: Is it a copy of the one you gave me?

MR. CHALENSKI: That's correct.

MR. AVERY: I have no objection.

THE COURT: Received.

(Government's Exhibit 1 for identification was marked in evidence.)

THE COURT: Let me see it, now I can read it. You say you showed this to the defendant?

THE WITNESS: Yes, Your Honor, I read it to her and she read it with me and acknowledged

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that she read it, and I asked her if she could read and she said she could.

THE COURT: You read it out loud to her?

THE WITNESS: Yes Your Honor I did.

THE COURT: And this was after she had been in your custody approximately 28 minutes after you sought her out.

THE WITNESS: About 20 minutes, yes, Your Honor. She had been verbally advised --

THE COURT: I understand.

MR. AVERY: I object, that is a conclusion as to the advice. Can it be stricken?

THE COURT: Go ahead.

BY MR. CHALENSKI:

Q Mr. Den Haese, is that your signature that appears at the bottom of that warning of consent to speak form, is it not?

A Yes.

Q Did you observe the Defendant Barbara Broome sign that statement?

A Yes, I did.

Q Did the defendant Broome give you any oral or written statements following the signing of that warning consent to speak form?

A She gave us oral statements, and they were later

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transposed into a written statement.

Q I show you Government's Exhibit 2 marked for identification, can you tell me what that is?

A This is a two-page written statement given to us by Barbara Broome signed at 1:15 p.m., dated February 21, 1974.

MR. CHALENSKI: I offer that statement into evidence at this time.

MR. AVERY: I have no objection, Your Honor, to it being received in evidence for the purpose of this hearing as the document to which--

THE COURT: Received.

(Document marked Government's Exhibit 2 was received in evidence.)

BY MR. CHALENSKI:

Q Is your name contained on that statement?

THE COURT: Sustained.

BY MR. CHALENSKI:

Q Did you witness the making of that statement?

THE COURT: Sustained.

BY MR. CHALENSKI:

Q Mr. Den Haese, during the course of the interrogation did the defendant Broome appear uncomfortable to you?

A While she was being interviewed, she did not appear

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uncomfortable.

Q Did you do anything to possibly ease any inconvenience she might have during the course of that interrogation?

A I believe I bought her some coffee or hot chocolate lit her cigarettes.

Q You believe you did or --

A (Interrupting) I did.

THE COURT: This occurred over the lunch hour, did anybody go to lunch?

THE WITNESS: Didn't take her to lunch, Your Honor.

THE COURT: Did anybody give her lunch?

THE WITNESS: No, not to my recollection.

THE COURT: You picked her up before 12:00, here it is 2:00 something, she hadn't had lunch, is that so?

THE WITNESS: That's correct, Your Honor, neither did I.

THE COURT: But you weren't being interrogated. All right, proceed.

BY MR. CHALENSKI:

Q Mr. Den Haese, at what time was this statement signed?

A 1:15 p.m.

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Q Did you make any promises to Mrs. Broome during the course --

MR. AVERY: Objection.

THE COURT: Overruled.

THE WITNESS: Mrs. Broome wasn't promised anything. I don't know what you are referring to about promising anything, when she was being taken to be arraigned, if you construe that as a promise, she would have an opportunity to make bail as soon as we could get the other parties together.

BY MR. CHALENSKI:

Q Did you at anytime following her arrest advise her of the charges against her?

A Yes.

Q What did you tell her?

A At the immediate onset of effecting the arrest, we told her she had been indicted by a grand jury relative to the theft, forgery and utterance or cashing of Treasurer's checks, that the other defendants, we mentioned their names, her name had been brought up as being involved, and she had been indicted and we were here to arrest her.

Q What about the conspiracy charge?

A We discussed that.

Q Did you tell her that she had been charged with

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conspiracy?

A Yes.

Q At anytime following her signing of that waiver and consent to speak form, did she indicate she desired to speak to counsel?

A Not to my recollection.

Q Did she indicate she desired to terminate the interview?

A No.

Q Did she indicate that she didn't want to talk to you anymore?

A No.

Q Did she indicate in any way she did not want to give a statement?

A No, she acted like a lady the whole time.

Q Are you aware of Miss Broome's age?

A Yes.

Q What is it, what was it on February 21, 1974?

A About 45.

Q Had you ever interviewed Miss Broome at a previous time?

A Yes.

Q What was the occasion of that?

A We were attempting to investigate the theft and cashing of Treasurer's checks and welfare checks

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in the area, and it had come to our attention that her car had been used, so another agent and myself went to speak to Miss Broome to see what she could tell us about it and to determine if she was involved in it.

Q Did you advise her of her rights at that time?

A Yes, she was advised of her rights at that time.

Q What was the date?

A I believe it was November 26, 1973.

Q Did you read the Secret Service form 1737 to her at that time also?

A Yes I did.

Q Did she give you a statement at that time?

A Yes she did.

Q Did she answer all of your questions at that time?

A She answered all of our questions, yes.

Q Did she do everything you asked her to do at that time?

A No.

Q What did she refuse to do?

A She didn't want to give us any handwriting exemplars.

Q Did she say anything in conjunction with refusing to give those?

A She couldn't understand why we wanted them, and we

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explained to her that because her car had been used she was technically considered a suspect, and in order for us to determine whether or not she was a suspect, we needed some handwriting exemplars.

Q She refused to give you the handwriting exemplars at that time?

MR. AVERY: I am going to object to any further questioning, it is immaterial.

THE COURT: That is repetitive, I have heard him testify twice she refused to give handwriting exemplars, do you want to do it a third time?

BY MR. CHALENSKI:

Q Following the signing of this statement in evidence, did you present Mrs. Broome to the Magistrate, did you transport Mrs. Broome to the Magistrate and have bail set?

A Mrs. Broome was transported to the Magistrate as soon as practically possible.

MR. AVERY: Objection, ask it be stricken.

THE COURT: Yes, strike it out.

THE WITNESS: Yes, she was transported to the Magistrate's office.

THE COURT: What time?

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THE WITNESS: Mid-afternoon, I would
guess 2:30, quarter to three.

BY MR. CHALENSKI:

Q Can you better place that time?

A No, not exactly.

Q What is your best recollection of that time?

A 2:30.

MR. CHALENSKI: That's all I have from
this witness, Your Honor.

CROSS EXAMINATION

BY MR. AVERY:

Q Mr. Den Haese, you executed the warrant, did you
not, that morning?

A Excuse me?

Q You executed a warrant that morning, did you not,
on Barbara Broome at the 4-H Building?

A Yes sir, I did.

Q Did that warrant not direct you to bring her forth-
with before the United States District Court, for
the Northern District of New York?

A Yes it did.

Q Did you do so?

A Yes we did.

Q Forthwith?

A Yes, we did.

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Q As a matter of fact when you came down from the 4-H Building, did you not come down Genesee Street, Grant Avenue to Fulton, over Fulton to Genesee and right out Genesee to Half Acre?

A I don't remember the route.

Q Who drove?

A I drove.

Q You knew where to go?

A I was concerned about where to go, because I don't know Auburn that well.

Q Do you know where the Magistrate is?

A Yes.

Q Where?

A Here on Genesee Street.

Q In the National Bank Building?

A Yes.

Q Did you not pass the National Bank Building on your way to the State Police headquarters?

A Perhaps indirectly.

Q You came back to the Magistrate's office?

A Yes.

Q You came back the same way you went to the State Police headquarters?

A Not to my recollection.

Q Came back a different direction?

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A May have.

Q Did you drive?

A I think I did, I may not have, I am not positive about that.

Q But it is true that the Magistrate has an office in the National Bank Building directly in the center of the city of Auburn, is that right?

A The Magistrate has an office on Genesee Street in Auburn, I don't know if it is in the exact center of Auburn.

Q It is in the business district?

A Yes.

Q And the 4-H center is on the eastern edge of the city of Auburn, is it not?

A It is in the eastern portion of Auburn, yes.

Q It is within a few hundred yards of the city line, is it not?

A I don't know.

Q It is on the road to Syracuse?

A One of the roads.

Q Route 5?

A Yes, off Rt. 5.

Q And the State Police headquarters is on Rt. 5 west of the city of Auburn, is it not, Rt. 5 and 20?

A I don't know if it is 5 or 20, it could be both.

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Q Both is it not?

A Yes.

Q And it is about three miles outside the city line,
is it not?

A I couldn't tell you that.

Q Some distance.

A I know the whole trip was about six miles from the
place of arrest to the place of processing.

Q Now you said that you had talked to her about what
her commonly called Miranda warnings were at the
4-H Building, where in the 4-H Building did you
make the statement which you told the court about?

A In private in the hallway outside of the classroom.

Q After she came out of the meeting?

A Yes, we were trying to avoid any kind of attract-
ing any sort of attention to her at all.

Q This is in the main corridor upstairs or downstairs?

A Downstairs in a side corridor.

Q And did she make any response to any of your state-
ments?

A Yes, she responded to our statements.

Q How many of you were there?

A Special Agent De Julio and myself.

Q You were both with her at that time?

A Yes.

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A. George Den Haese for Government, Cross.

Q Which of you asked -- which of you told her that she would be then handcuffed?

A Excuse me, I don't understand the question?

Q Didn't one of you tell her at that point that she was going to be handcuffed?

A Not to my recollection, sir, certainly it wasn't I.

Q You were there with De Julio?

A Yes sir.

Q Did you hear him say so?

A Not to my recollection.

Q Was the subject of handcuffs brought up in any way?

A Not that I recall.

Q Did you have handcuffs with you?

A I honestly don't remember, I may have.

Q Now let me ask you, at the time you took her in the car, where did you place her?

A She sat in the customary position in the right rear

Q That is a two-door car?

A It is a four-door car.

Q And you and De Julio sat in front?

A Yes sir.

Q Did you have a conversation at that point between the 4-H Building and the State Police headquarters?

A Conversation existed, yes.

Q What did you say to her and what did she say to

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you?

A As I recall -- the exact words and conversation I can't recall, but I do recall the fact that she was surprised at being arrested, she couldn't understand why this had happened. She was in my opinion exculpatory in nature and wanted to discuss the situation at length, and I know myself I was hesitant to discuss this because we had not yet obtained our advice of rights form with her intelligently waiving her rights to talk to us.

Q She had not signed it at that point?

A That's correct.

Q But did you say -- did you not say that you read it to her at the 4-H Building?

A I did not say that.

Q If you did, it is an error?

A If I said that earlier, it is an error, because I did not read it.

Q What did you tell her at the 4-H Building?

A Exactly what I cited earlier when Mr. Chalenski was questioning me and Your Honor was questioning me.

Q Calling your attention to Exhibit 1, I ask you if your words were not identical to the words of that form?

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- A They are not identical, I am sure of that.
- Q You say you did not have the form with you at that time?
- A That's correct.
- Q You are saying she did not make an intelligent, knowing waiver at that time?
- A I didn't say that, I said she hadn't signed the document.
- Q Didn't you say just now that you did --

THE COURT: I heard what he said.

BY MR. AVERY:

- Q In any event, she had not had an opportunity to have a telephone to call a lawyer?
- A At one point?
- Q At the 4-H Building.

MR. CHALENSKI: Object to the form.

THE WITNESS: She didn't request to use the telephone, if she had asked, we would have.

BY MR. AVERY:

- Q Did you tell her that she could use a telephone to call a lawyer at that 4-H Building?
- A She was advised she could contact a lawyer at any time when we initially explained the basic Miranda--

THE COURT: Did you tell her there was a telephone available to do so?

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THE WITNESS: It wasn't necessary.

THE COURT: Did you tell her?

THE WITNESS: No.

THE COURT: That's what I thought.

BY MR. AVERY:

Q Now in the car, did you not have discussions with her?

A We talked about things in the car.

Q And you talked about the case, did you not?

A I tried not to.

Q But you did talk about it?

A I would have answered her questions as a normal human being.

Q Can you tell me yes or no whether you talked about it?

A I asked her questions and I guess you could say we talked about it.

Q Did De Julio?

A I would guess he acted the same way I did.

Q Then you were in the car a period of time of about would you say 20 minutes?

A We were in the car about 20 minutes, yes.

Q And you did discuss the happenings which led up to the indictment 74-CR-26?

A Against my will.

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Q But you did discuss it, did you not?

A Yes sir.

Q As a matter of fact, wasn't it you who said to her that there was some \$4,000 involved?

A Approximately.

Q And you did say this to her?

A She asked me how much money was involved and I told her.

Q And what was her answer?

A "Wow, that's a lot of money."

Q Now as a matter of fact you talked to her about this case during the fall, did you not, from September 1 until the date the Grand Jury met?

A I believe Agent De Julio and I talked to her November 26, 1973.

Q That was part of a general investigation of many people at Malone Village, was it not?

A I believe two people lived at Malone Village at that time. I may be mistaken. It was a Linda Adele who lived next door to Barbara and Barbara.

Q And you were at the scene, that is, at Malone Village frequently during the fall, were you not?

A No.

Q More than once?

A I think twice, and I think it was on the same day.

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Q And you talked to her and she talked to you about the entire episode of September 1?

A No, she talked to us very hesitantly the one time that I talked to Mrs. Broome.

Q Now you said she did not give you a handwriting exemplar, is that correct?

A Not adequate handwriting exemplars, no sir.

Q Would her signature be an adequate exemplar?

A Definitely not.

Q She did give you a signature?

A I believe she signed her advice of rights form.

Q And she also signed a statement, did she not, at that time?

A Yes.

Q And the statement is dated 26 of November 1973?

A I don't have the statement, sir, I am guessing at the date of November 26, 1973.

Q And this was in response to your questions and it concerned the events of September 1?

A That statement was in response to our questions.

Q So she did sign the statement?

A Yes, she signed the statement.

Q Now Mr. Den Haese, were any of the other defendants -- there are five, I believe, in this case, were there not?

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A Six.

Q Were any of the other defendants present either in the car or at the State Police headquarters when you got there?

A Would you give me a time reference, I don't know which interview you are talking about.

Q Now I am talking about the February 21 interview when you took her from the 4-H Building by automobile past the Magistrate's office to State Police headquarters, were any other defendants with you?

A There were no other defendants in the car when we transported Mrs. Broome.

THE COURT: Just so I understand it, do I understand you went west on Genesee Street through Auburn?

THE WITNESS: Your Honor, I really don't know, I think we went -- I don't recall going down Genesee Street, it is possible we may have. We went west from where we initially contacted her.

THE COURT: Where did you contact her initially?

THE WITNESS: The eastern portion of Auburn.

THE COURT: Whereabouts?

THE WITNESS: 248 Grant Avenue.

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THE COURT: Where is that? Do you have a map?

MR. AVERY: That is about six hundred yards from the eastern edge of Auburn on the road to Syracuse.

THE COURT: Well, on Rt. 5?

MR. AVERY: On Rt. 5, yes sir. I didn't mean to testify, but I believe the witness --

THE COURT: If it is a physical fact. I am trying to get oriented.

MR. AVERY: State Police headquarters is 180 degrees in --

THE COURT: Over toward the Montezuma Swamp, is that right?

MR. AVERY: That's right, sir.

THE COURT: I am trying to place where this other place is, see whether you have to go down Genesee Street, that is what I want to know, you went by not only the Magistrate's but by the Court House.

BY MR. AVERY:

Q Did you not follow Rt. 20 through the center of Auburn? .

A I don't remember, there are at least 7 or 8 different ways I have been told, and I am sure I have

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traveled them all in Auburn to get from the eastern section of Auburn to the western section of Auburn.

MR. AVERY: I will cover that with testimony from the defendant, Your Honor.

BY MR. AVERY:

Q When you got to the State Police headquarters, it was then approximately what time?

A Minute or two after twelve noon, and the BCI substation is not State Police headquarters.

Q It is on Rt. 5 and 20 west.

A It is on the right hand side as you are going west.

Q You have the state flag out front, it is a subdivision of this New York State Police at Canandaigua?

A Yes.

Q It is a New York State Police substation?

A Yes.

Q It is a BCI office there also, is that correct?

A Yes sir.

Q Had you made prior arrangements to bring her there?

A We had them prior to effecting the six warrants, the investigating officers all had them, we had to plan how --

Q Did you or didn't you make prior arrangements?

MR. CHALENSKI: Objection, he is not

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letting him answer.

THE COURT: The witness's answers are almost uniformly unresponsive. Answer the question. You are a trained agent. Don't be making arguments with every answer, they are not very impressive.

BY MR. AVERY:

Q Did you make prior arrangements?

A Yes.

Q When?

A Two or three times prior to the date of the arrest.

Q So that this was a well established plan, a part of which I believe, is it not, involved the gathering of the agents at that location before they fanned out to arrest these six defendants, is that not right?

A We did something like that, yes.

Q So you met there in the morning of that day, all of the agent involved in this multiple arrest?

A Yes.

Q And you all had identical warrants which commanded you to bring the defendant arrested by the particular agent to the Magistrate forthwith?

A Yes.

Q Now did any of the agents involved in this so-called raid, if you want to call it that, did any

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of them bring their particular defendants forthwith before the Magistrate?

A Not to my knowledge.

THE COURT: Isn't that a conclusion of law?

MR. AVERY: All right, sir, yes, it is forthwith.

THE COURT: Fix the time.

BY MR. AVERY:

Q Were any of the defendants other than Barbara Broome present at the State Police Headquarters when you came back after having met there originally?

A Yes.

Q Who?

A I believe Linda Adele was there, Valerie Brown, Linda Adele to the best of my recollection, those two were present.

Q Where were the others?

A They hadn't been located as yet.

Q But when Barbara Broome got to the Magistrate's, all of the defendants were present during the course of the afternoon, were they not?

A When Barbara Broome got there, only those three defendants that we had located were there, the

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other two defendants were brought in approximately a half hour later.

Q Were they also taken to the State Police headquarters for the same procedure that you have mentioned?

A No, they were not.

Q Why were they not taken to the State Police headquarters?

A Because they had voluntarily been processed prior to their arrest, and they had given us statements and we had all of the forms that we needed on the other two, other forms.

Q Had they been arrested prior to the Grand Jury or time of the Grand Jury?

A No.

Q Had they been fingerprinted?

A Yes.

Q Had they been photographed?

A Yes.

Q Prior to the time of their arrest?

A Yes.

Q Prior to the time of the Grand Jury or after?

A Prior to the Grand Jury.

Q Were they under arrest at the time they were fingerprinted?

A No.

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- Q How about Hudson and Udell, or was it Valerie Brown?
- A Valerie Brown and Linda Adele were at the sub-station.
- Q And the same procedures were followed with them?
- A I don't know.
- Q That is, fingerprinting and photographing and taking statements?
- A I believe we collected one or two additional forms from one or both of the defendants, we had forgotten to take some of the necessary information for physical characteristics and we had to take some more. I believe they were our 84 forms.
- Q How many Secret Service agents and/or postal officers were present at the time you took this statement from Barbara Broome?
- A There was Agent De Julio, myself and Postal Inspector Robert Barrow.
- Q And in what room did you take the statement?
- A Senior Investigator Manning's office because it was the most private and it had a telephone.
- Q Is this the one in the rear of the building?
- A No, it is in the front of the building just as you make a right coming down the hallway.
- Q It is to the right and in the right corner, is it

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not?

A No.

Q Is there a telephone in the room?

A Yes.

Q Now when you talked to Barbara Broome in that room, had you already discussed in substance all of the events of that day, of the day of September 1, 1973?

A No.

Q When you got to the State Police headquarters and in Inspector Warming's office, did you say that you gave her the consent form 1737, which I believe is Exhibit No. 1, did you give her a copy of this form?

A She read it with me while I read it outloud to her.

Q And how long would you say approximately she took in reading it?

A As long as I took to read it, maybe a little longer.

Q You read it outloud?

A Yes.

Q You said someone else explained it, who was that?

A No one else explained it when I read her that document, from that document.

Q And at the time she signed it, you claim it was 12:08 in the early afternoon?

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A Yes.

Q Now had you talked to her at all before this time while you were at the State Police headquarters?

A No.

Q You had talked to her in the car on the way down?

A Yes.

Q Now did you explain to her how she would get an attorney in the event she could not afford one?

A Yes.

Q How?

A There would be one appointed for her by the court.

Q How would she get an attorney at the time you wanted to have her make a statement, what plan did you have to secure an attorney for her at that time?

A None.

MR. CHAIENSKI: I object, Your Honor.

THE COURT: Overruled.

BY MR. AVERY:

Q Did you not know that when she went before the Magistrate if she could not afford an attorney and was in fact indigent, one would be appointed for her?

A Yes.

Q And as a matter of fact, didn't one of you advise Magistrate MacLaine that she was indigent?

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A I don't recall that, I may have said that, I don't recall it.

Q It is possibly true, is it not? If Barbara Broome says so or Magistrate MacLaine says so it must be true.

MR. CHALENSKI: I object.

THE WITNESS: Not necessarily.

BY MR. AVERY:

Q Well, all right, it could be true so far as you know?

A It is possible.

Q Is it not true that you knew that she was unable to afford an attorney?

A No.

Q From your conversations with her in the fall and your investigation of her, had you not learned that she was a single woman, that is, a woman whose husband had abandoned her, and she was raising a child and living on limited income, did you not know this?

A I didn't know she was an abandoned woman living on a limited income.

Q At Malone Village, which is low-cost public housing.

A I didn't know it was public housing.

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Q You knew she made about \$4,000 at that time, did you not?

A I did not know that.

Q But there was no way then in which she could have obtained an attorney at the time you told her she had a right to one if she were indigent?

A Would you repeat the question?

Q You knew that there was no way in which she could get an attorney assigned to her at the time you told her she had a right to one.

A All she had to do was pick up the phone.

Q As a matter of fact, didn't she tell us that she had no money and there wasn't any point in her using the telephone?

A I don't recall that.

THE COURT: Would you deny that she said that?

THE WITNESS: I can't deny it because I don't have perfect recall, she may have said that, I don't recall it.

BY MR. AVERY:

Q Have you ever had an assigned attorney present before arraignment in one of these cases?

A No.

Q As a matter of fact --

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A (Interrupting) Oh, yes, excuse me, I wasn't there and I wasn't the interviewing agent.

Q But no attorneys were assigned for any of the defendants until after the arraignment?

A That's correct.

Q Was there not a fourth man present during the interrogation?

A If he was, he shouldn't have been, he may have walked in and out. If you are referring to Senior Investigator Manning, he had some papers --

Q (Interrupting) I am asking you, you were there.

A Yes, he came in and out a couple of times.

Q The door was closed to his office?

A Both doors were closed.

THE COURT: Were any of these policemen in uniform?

THE WITNESS: No, Your Honor.

BY MR. AVERY:

Q This is a headquarters for a uniformed troopers barracks, that is a subdivision headquarters for a uniformed troopp, is it not, part of the Canandaigua Troop E?

A I think so.

Q There were uniformed troopers and police cars in and around that building, were there not?

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A There was at least one uniformed trooper, yes. I didn't see any others.

Q Isn't there a sergeant that sits at the information desk?

A Yes, that is the one I am referring to.

Q And you came right past him, did you not?

A Yes, that is the front entrance.

Q And there is the teletype and the usual paraphernalia of the headquarters?

A I think that is in another room.

Q This is a small room in which there is some furniture, a desk?

A Which room?

Q Manning's office.

A Yes, Senior Investigator Manning's office had two or three chairs, a desk, a couple of filing cabinets, telephone, perhaps coat tree.

Q Were additional chairs brought in?

A One, I believe.

Q And you sat behind Inspector Manning's desk in the chair that he normally occupies?

A At first, yes.

THE COURT: We will take a very short recess.

(Thereupon a short recess was taken after

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which the hearing was resumed.)

THE COURT: I have a map here labeled Court Exhibit 1, it is a map of the city of Auburn. I would like counsel, if you can, to point out where this 4-H facility is, and I guess all we can do, since this map doesn't go out into the outskirts of Auburn, is to point out with an arrow indicating the direction out of town, the left hand side where the police headquarters is.

MR. CHALENSKI: Your Honor, I am not familiar with either of these locations.

THE COURT: You should be.

MR. AVERY: The State Police Station shows, the location of it.

THE COURT: We can mark a larger copy so we can get both on there. Put the 4-H where it is with a circle on it, and put State Troopers on the other one so we will know what we are talking about (counsel marks maps).

THE COURT: All right, so court's exhibit 1 on which counsel have marked the location of the 4-H facility and the State Police Station, is that right?

MR. AVERY: Yes.

THE COURT: All right.

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BY MR. AVERY:

Q Now, Mr. Den Haese, when you talked to Mrs. --

THE COURT: I am also wondering if you could mark on here the court house and the Magistrate's office?

MR. AVERY: Surely.

(Counsel marked map.)

THE COURT: Let the record reflect the map has been marked. All right.

BY MR. AVERY:

Q Now Mr. Den Haese, when you talked to Barbara Broome in the State Police headquarters, you told us that you showed her a copy of your statement form, waiver form.

A 1737.

Q Which is Exhibit 1, I believe here. Did you observe whether or not she had her glasses on at that time?

A I didn't, I don't know, I don't recall.

Q Did you observe how long it took her to read the statement?

A She appeared to finish a few moments after I did.

Q Would you describe how she held it for the purpose of reading it?

A I don't believe she held it, I think it was on the

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desk and I ran my finger along the lines and her head was bent over the paper and I believe I was standing.

Q And you were reading it to her at the same time?

A Yes, as she appeared to read.

Q At the same time she appeared to read it?

A Yes.

Q And did you point out to her where to sign?

A Not immediately, no.

Q Please, yes or no, did you point it out to her, when she signed did you point --

A (Interrupting) Prior to her signing, I showed her the line to sign on.

Q And you said "Sign your name here"?

A "If you agree that you understand your rights and that you have read it and I have read it to you."

Q And I believe you said you don't recall whether or not she told you that she didn't have any money for a lawyer, so there is no point in using the telephone, you don't remember this?

A No.

Q But you don't deny it could have happened?

A It could have happened.

THE COURT: Were all the men present white?

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A. George Den Haese for Government, Redirect.

THE WITNESS: Yes, Your Honor.

THE COURT: So that the defendant was the only black?

THE WITNESS: Yes, Your Honor.

THE COURT: Were there any other women present?

THE WITNESS: Not in that room, Your Honor.

MR. AVERY: That's all.

REDIRECT EXAMINATION

BY MR. CHALENSKI:

Q Mr. Den Haese, what was the mileage from the 4-H Building to the BCI substation?

A Approximately six miles.

Q What was the mileage from the BCI substation to Magistrate MacLaine's office?

A I would be guessing at 3 1/2 or 4.

Q On the morning of February 21 when you met at BCI headquarters to discuss the day's activities, you discussed the probable arrest of the defendants in the indictment, is that correct?

A Yes, we discussed it.

Q Did you know where you would find these various defendants?

A We had a -- prior addresses that were about three

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or four months old, and we suspected having difficulty.

Q Could you characterize whether any of the defendants were in the same area of town or were spread around town?

A Most of them were within the city limits of Auburn, that's why they should have been --

Q (Interrupting) Were they in any particular quadrant of the city?

A No, not to my knowledge, they were all within the city of Auburn.

Q Were any of them on the west side of the city?

A Depending on your mid-point, two of them could have been considered to be in the western portion.

THE COURT: Did you pick up any other defendants, you, yourself?

THE WITNESS: No, Your Honor.

THE COURT: How is this relevant, where the other defendants were?

MR. CHALENSKI: Your Honor, it shows that there was some reason for meeting at the BCI headquarters.

THE COURT: I am not concerned with that, I am concerned with what they did after they picked her up, very concerned.

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BY MR. CHALENSKI:

Q Did you state the mileage from the BCI headquarters to Magistrate MacLaine's office?

A I guessed at 3 1/2 or 4.

Q That is your best recollection?

A Yes.

MR. CHALENSKI: Thank you.

MR. AVERY: One further question. You made prior arrangements with Magistrate MacLaine, had you not, to bring the defendants before him?

A We notified him that we might be bringing defendants in for bail hearing.

Q That was before you went out to make the arrest?

A That was the day before.

THE COURT: What did he say when you told him?

THE WITNESS: "Fine. What time do you expect to be here?" I said "Your Honor, I am not sure, probably early afternoon."

THE COURT: Did he tell you that he would be unavailable at any time?

THE WITNESS: I believe he said late afternoon he had a meeting at the YMCA.

THE COURT: But otherwise he was available all day?

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THE WITNESS: Yes, Your Honor.

MR. AVERY: That's all.

THE COURT: Did you inquire whether the judge was sitting here in the court house?

THE WITNESS: No, I did not.

THE COURT: All right.

(Witness excused.)

THE COURT: Do you rest?

MR. CHALENSKI: We rest.

THE COURT: I grant the motion to suppress the statement. There is no doubt in the court's mind at all that there was delay in light of all the circumstances. They had to, if not pass directly by the court house and Magistrate, they were within minutes of it from the time they arrested the defendant. The only other alternative route other than to go up Genesee Street past both the court house and the Magistrate would have been over Clark Street to Rt. 5, and in order to get there you have to come within not more than five minutes of the Magistrate's office and the court house.

The court will take judicial notice of that, having done it many times himself.

In these circumstances it is a farce to

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warn the defendant of her rights to counsel and not make a telephone available to her, tell her she has a telephone available to her and first to take her up and subject her to this interrogation. Miranda isn't some empty ritual, it bears on the constitutional rights of the defendants.

I think in the circumstances, not only was there unreasonable delay, although the time per se was not overly long, running from approximately 11:35 in the morning until about -- what is the time on that confession?

MR. CHALENSKI: 1:15, Your Honor.

THE COURT: 1:15, it was over the lunch hour, there was not even an offer to get her lunch. She was surrounded by policemen, all white. There were no other women in the vicinity.

I think in the circumstances the court must find that delay was unreasonable even under the MacNabe Rule, not to mention Massai, and plainly under Massai the delay was unreasonable. The Secret Service did not follow the very specific mandate of the arrest warrant to bring the prisoner, the defendant, before a Magistrate forthwith. There only can be one conclusion reached here on these facts, that there was a deliberate move to

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take her to the police station, get a confession out of her under circumstances which overbore her will and in denying her her sixth amendment right to counsel.

With more time I might dress up these findings in a little more legalistic style, but I don't intend to make any further findings. I think the ones I made are amply supported by the record and the evidence, and more than that the demeanor of the witness, he was a trained agent, his answers were unresponsive and he was busy arguing his case, playing the role more of a prosecutor than of an agent. This practice is not new to this court sitting in this district. Only two years' ago we had a similar instance of an arrest in Ithaca where again a Magistrate was by-passed, and it must stop, there is no excuse for it, there is no reason for it under the sun, it should have been brought either to the Magistrate or this court, both were within minutes of it, and the detainer over the lunch hour under these conditions for the length of time involved here is unreasonable and unwarranted.

Are you ready for trial?

MR. CHALENSKI: Your Honor, one of our

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Certification of Transcript.

witnesses is currently in New York City in a rehabilitation institution. I would have to habeas corpus her up here for trial. I would like two or three days' notice.

THE COURT: You would be able to go without the confession?

MR. CHALENSKI: We would be able to go to trial on the first indictment without the confession. There is a motion to consolidate these two trials which counsel opposed because of the confession being admissible in one and not in the other.

THE COURT: It is not admissible in either one, so there is no need not to consolidate.

MR. AVERY: No sir.

THE COURT: You will proceed to trial when the clerk advises you.

MR. AVERY: The defendant is ready at any time.

* * *

This is to certify that the foregoing record is a true and accurate transcript of the proceedings had at the time and place noted in

Proceedings, dated June 4, 1974.

Certification of Transcript.

the heading hereof.

Martin L. Miller

Official Court Reporter
United States District Court
Northern District of New York

GOVERNMENT EXHIBIT NO. 1 — Warning of Rights.
WARNING AND CONSENT TO SPEAK

WARNING OF RIGHTS

You must understand your rights before we ask you any questions.

You have the right to remain silent.

Anything you say can be used against you in court, or other proceedings.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be appointed for you by the court. If you decide to answer questions now without a lawyer present, you will still have the right to stop the questioning at any time. You also have the right to stop the questioning at any time until you talk to a lawyer.

I have read this statement of my rights and it has been read to me, and I understand what my rights are.

Date Feb. 21-1974
 Time 12:08

Barbara Broome
 Signature

WAIVER

I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or force of any kind has been used against me. I hereby voluntarily and intentionally waive my rights and I am willing to make a statement and answer questions.

Date Feb. 21-1974
 Time 12:08

Barbara Broome
 Signature

CERTIFICATION

I hereby certify that the foregoing Warning and Waiver of Rights were read by me to the above signatory, and that he also read it and has affixed his signature hereto in my presence.

POSTAL INSPECTOR A. George Du Hara
 Signature
Gavett J. DeGulio
 Witness

GOVERNMENT EXHIBIT NO. 2—Confession.

STATE OF NEW YORK
 COUNTY OF CAYUGA
 CITY OF AUBURN

BEFORE MAKING THIS STATEMENT, I SIGNED "WARNING AND
 CONSENT TO SPEAK" FORM, SSF NO. 1737, BEFORE SPECIAL
 AGENT A.G. DENHAESE, U. S. SECRET
 SERVICE.

I, Barbara Broome, reside at Apt. 146, Bldg. 2, Woodbrook
 Apts. Auburn, N.Y. and wish to state that I knew that
 Lois Endell, Valerie Braun, Linda Able and Jay
 Hodson, prior to 9/1/73 had stolen, forged and
 cashed checks from the mail but felt it was
 not my concern so I didn't report them.
 on the morning of 9/1/73³⁰, Valerie Braun, and Lois
 Endell came to my house in Melrose village and wanted
 to borrow my car. We discussed it and I said "you

I HAVE READ OVER THE FOREGOING STATEMENT CONSISTING
 OF 2 PAGES, AND I HAVE BEEN GIVEN AN OPPOR-
 TUNITY TO MAKE CORRECTIONS. ALL THE FACTS CONTAINED
 HEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Witnessed:

Barbara Broome
 Time 1:15 P.M.
Garnett J. de Yula Date Feb. 21, 1974

Sworn to before me this 21st day of February 1974

Authority to Administer Oath:
 Title 5, Section 303, USC

Witnessed:

Witness:

A. George Denhaese
 SPECIAL
 INSPECTOR

Government Exhibit No. 2 — Confession.

girls are up to no good don't let my car be run¹³ and I don't want my car involved in nothing or any wrong doing." Lois said "we will pay you for the use of your car."

Later on 9/1/73 Stephanie, ~~and~~^{8^B} my daughter, and I discussed why my car had not been brought back yet. Stephanie said that I should call the police to show that I was not involved in any wrong doing by Brown, Endell, Capes Hodson and Cole. I thought about doing it for my own protection but did not.

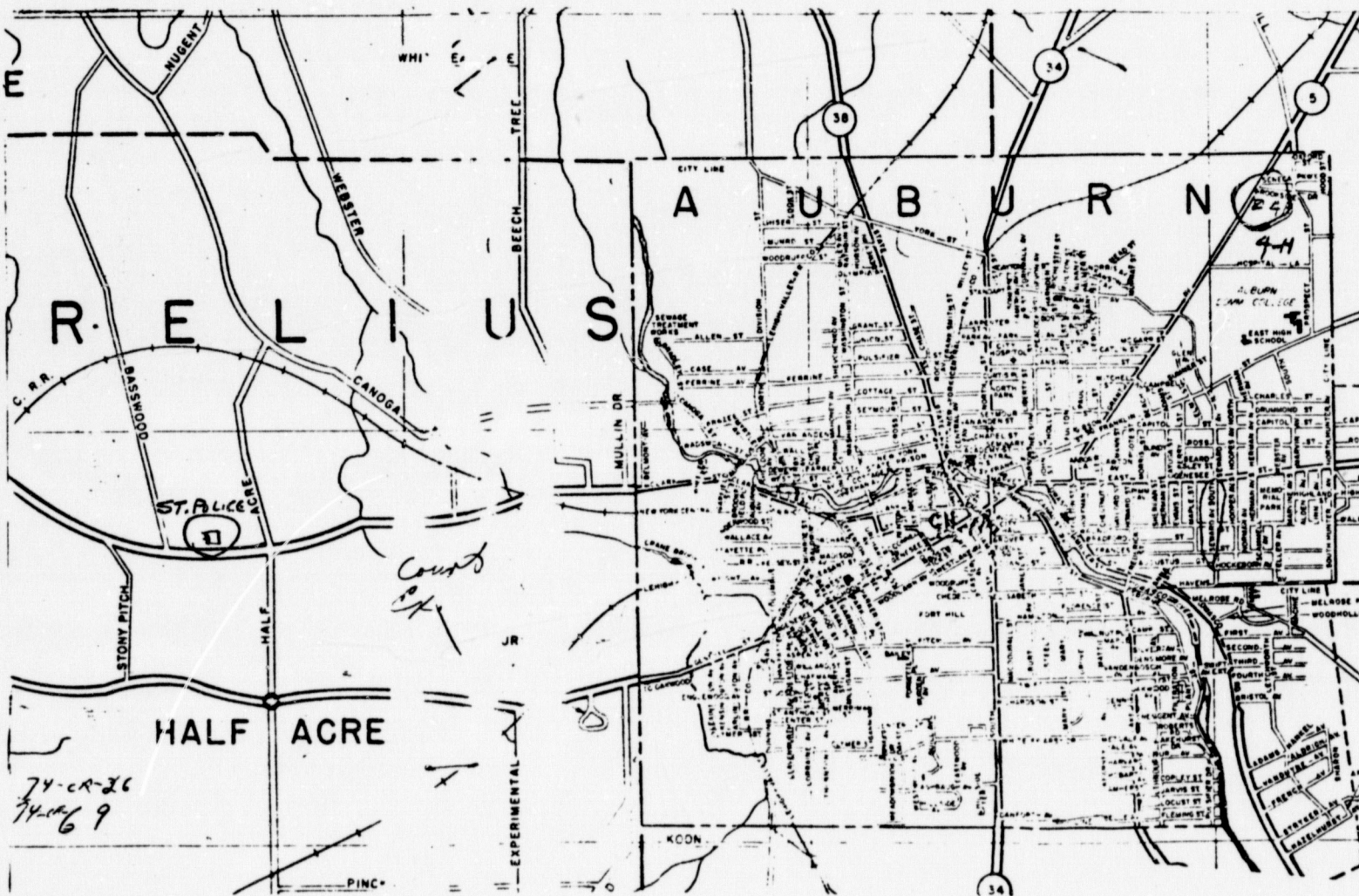
When Lois returned my car on the evening of 9/1/73, she paid me \$50 cash. Valerie Brown also promised to buy me an outfit because I was so upset with my car being late. When they returned my car I said "you girls have been stealing checks I don't want to know nothing." I left.

I know these girls have been stealing and forging checks ~~and still are~~^{13^B} but felt that I should not tell on them. I know that I have done wrong and I am sorry.

Barbara Broome

Time 1:15 P.M.

Date Feb 21, 1974



INDICTMENT 74-CR-26.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No. 74-CR-26

- v -

INDICTMENT

LOIS ANN EUDELL, LINDA LEE ADLE,
ELIZABETH JOY HODSON, VALERIE LYNN
BROWN, MILDRED COPES, and
BARBARA BROOME,

Vio: 18 USC §§371, 495,
1708 and 2.

(17 Counts)

Defendants.

COUNT I

THE GRAND JURY CHARGES:

From on or about the 1st day of May, 1972, and continuously thereafter up to and including the 4th day of September, 1973, in the Northern District of New York and elsewhere, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES, and BARBARA BROOME, the defendants, wilfully and knowingly did combine, conspire, confederate, and agree together with each other, to commit the following offenses against the United States:

1. To steal, take and abstract letters from and out of authorized depositories for mail matter, all in violation of Title 18, United States Code, §1708, and

2. For the purpose of obtaining and receiving sums of money from the United States and from its officers and agents, to falsely make and forge endorsements on the back of paper writings in the form of checks drawn upon the Treasurer of the United States, all in violation of Title 18, United States Code, §495, and

3. With intent to defraud the United States, to utter and publish as true, paper writings in the form of checks drawn upon the Treasurer of the United States with falsely made and forged endorsements on the back thereof, all in violation of Title 18, United States Code, §495.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following Overt Acts:

1. On or about the 3rd day of August, 1973, in the Northern District of New York, the defendants, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, and VALERIE LYNN BROWN, met and conversed.

2. On or about the 1st day of September, 1973, the defendant, BARBARA BROOME, supplied her automobile to the defendants LOIS ANN EUDELL, ELIZABETH JOY HODSON, and VALERIE LYNN BROWN.

3. On or about the 1st day of September, 1973, the defendants LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, and MILDRED COPES, met and conversed.

4. On or about the 4th day of September, 1973, LOIS ANN EUDELL rented an automobile from Fiermonte Chevrolet, Auburn, New York;

All in violation of Title 18, United States Code, Section 371.

COUNT II

THE GRAND JURY FURTHER CHARGES:

On or about the 2nd day of June, 1973, in the Northern District of New York, LOIS ANN EUDELL and LINDA LEE ADLE did steal, take and abstract from and out of an authorized depository for mail matter on the premises at 310 Melone Village, City of Auburn, New York, a letter addressed to Frances I. Nervina, 310 Melone Village, Auburn, New York 13021;

All in violation of Title 18, U.S.C., §§ 1708 and 2.

Indictment 74-CR-26.

COUNT III

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LOIS ANN EUDELL and LINDA LEE ADLE did steal, take and abstract from and out of an authorized depository for mail matter on the premises at 306 Melone Village, City of Auburn, New York, a letter addressed to Mary A. Barrette, 306 Melone Village, Auburn, New York, 13021;

All in violation of Title 18, U.S.C., §§1708 and 2.

COUNT IV

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LINDA LEE ADLE and ELIZABETH JOY HODSON did steal, take and abstract from and out of an authorized depository for mail matter on the premises at 65 South Street, City of Auburn, New York, a letter addressed to Howard B. St. Denis, 65 South Street, Auburn, New York 13021;

All in violation of Title 18, U.S.C. §§1708 and 2.

COUNT V

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LINDA LEE ADLE and ELIZABETH JOY HODSON did steal, take and abstract from and out of an authorized depository for mail matter on the premises at 63 South Street, City of Auburn, New York, a letter addressed to Marjorie S. Steel, 63 South Street, Auburn, New York 13021;

All in violation of Title 18, U.S.C. §§1708 and 2.

COUNT VI

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES, and BARBARA BROOME did steal, take and abstract from and out of an

Indictment 74-CR-26.

authorized depository for mail matter on the premises at 133 North Street, City of Auburn, New York a letter addressed to Anne V. Maykovich, 133 North Street, Auburn, New York 13021;

All in violation of Title 18, U.S.C. §§1708 and 2.

COUNT VII

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES and BARBARA BROOME did steal, take and abstract from and out of an authorized depository for mail matter on the premises at 133 North Street, City of Auburn, New York, a letter addressed to John J. Maykovich, 133 North Street, Auburn, New York 13021;

All in violation of Title 18, U.S.C. §§1708 and 2.

COUNT VIII

THE GRAND JURY FURTHER CHARGES:

On or about the 2nd day of June, 1973, in the Northern District of New York, LOIS ANN EUDELL and LINDA LEE ADLE, for the purpose of obtaining and receiving from the United States and from its officers and agents one hundred twenty one and forty one-hundredths dollars did falsely make and forge the endorsement "Frances I. Nervina" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back being of the following tenor and description:

United States Treasury Check
No. 43,769,873 over Symbol 3042
dated 06-02-73, payable to
Frances I. Nervina
310 Melone Vil.
Auburn, N. Y.,

in the amount of \$121.40.

All in violation of Title 18, U.S.C., §495.

COUNT IX

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LINDA LEE ADLE, for the purpose of obtaining and receiving from the United States and from its officers and

Indictment 74-CR-26.

agents, seventy-seven and forty one-hundredths dollars, did falsely make and forge the endorsement "Mary A. Barrette" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back being of the following tenor and description:

United States Treasury Check
No. 45,166,346 over Symbol 3042
dated 08/03/73, payable to
Mary A. Barrette
306 Melone Vil.
Auburn, N. Y.

in the amount of \$77.40.

All in violation of Title 18 U.S.C., §§495.

COUNT X

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, and VALERIE LYNN BROWN, for the purpose of obtaining and receiving from the United States and from its officer and agents two hundred nineteen and ninety one-hundredths dollars, did falsely make and forge the endorsements, "Howard B. St. Denis" and "Martha St. Denis" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back, being of the following tenor and description:

United States Treasury Check
No. 47,813,682 over Symbol 3042
dated 08-03-73, payable to
Howard B. St. Denis
65 South St.
Auburn, N. Y.,

in the amount of \$219.90.

All in violation of Title 18, U.S.C., Sections 495 and 2.

COUNT XI

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, and MILDRED COPES, for the purpose of obtaining and receiving from the United States and from its officers and agents, one hundred fifty three, and ten one-hundredths dollars, did

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Indictment 74-CR-26.

falsely make and forge the endorsement "Marjorie S. Steel" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back, being of the following tenor and description:

United States Treasury Check
No. 48,425,684 over Symbol 3042
dated 08-03-73, payable to
Marjorie S. Steel
63 South St.
Auburn, N. Y.,

in the amount of \$153.10,

All in violation of Title 18, U.S.C., Sections 495 & 2.

Count XII

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES, and BARBARA BROOME, for the purpose of obtaining and receiving from the United States and from its officers and agents, twenty eight and ninety one-hundredths dollars, did falsely make and forge the endorsement "Anne V. Maykovich" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back, being of the following tenor and description:

United States Treasury Check
No. 49,651,687, over Symbol 3045
dated 09-01-73, payable to
Anne V. Maykovich
133 North Street
Auburn, N. Y.,

in the amount of \$28.90;

All in violation of Title 18, U.S.C., Sections 495 & 2.

COUNT XIII

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES, and BARBARA BROOME, for the purpose of obtaining and receiving from the United States and from its officers and agents, two hundred twenty one and

Indictment 74-CR-26.

fifty one-hundredths dollars, did falsely make and forge the endorsements "John J. Maykovich" and "Mary Maykovich" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States, the said check with the falsely made and forged endorsement on the back, being of the following tenor and description:

United States Treasury Check
No. 49,651,686, over Symbol 3045
dated 09-01-73, payable to
John J. Maykovich
133 North St.
Auburn, N. Y.

in the amount of \$221.50;

All in violation of Title 18, U.S.C., Sections 495 & 2.

COUNT XIV

THE GRAND JURY FURTHER CHARGES:

On or about the 2nd day of June, 1973, in the Northern District of New York, LOIS ANN EUDELL, with intent to defraud the United States, did utter and publish as true to the P & C Food Market, Genesee Street, Auburn, N. Y., a paper writing in the form of a check drawn upon the Treasurer of the United States with a falsely made and forged endorsement "Frances I. Nervina" on the back thereof, the said check, with the falsely made and forged endorsement on the back thereof, being of the following tenor and description:

United States Treasury Check
No. 43,769,873 over Symbol 3042
dated 06-02-73, payable to
Frances I. Nervina
310 Melone Vil.
Auburn, N. Y.,

in the amount of \$121.40,

and LOIS ANN EUDELL then knew the said endorsement to have been falsely made and forged.

All in violation of Title 18, U. S. C., §495.

COUNT XV

THE GRAND JURY FURTHER CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, LOIS ANN EUDELL, with intent to defraud the United States, did utter and publish as true to the National Bank

Indictment 74-CR-26.

of Auburn, Auburn, N. Y., a paper writing in the form of a check drawn upon the Treasurer of the United States with a falsely made and forged endorsement "Mary A. Barrette" on the back thereof, the said check, with the falsely made and forged endorsement on the back thereof, being of the following tenor and description:

United States Treasury Check
No. 45,166,346 over Symbol 3042
dated 08-03-73, payable to
Mary A. Barrette
306 Melone Vill.
Auburn, N. Y.,

in the amount of \$77.40;

and LOIS ANN EUDELL then knew the said endorsement to have been falsely made and forged.

All in violation of Title 18, U.S.C., Section 495.

COUNT XVI

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, MILDRED COPES, and BARBARA BROOME, with intent to defraud the United States, did utter and publish as true to Balduzzi's Big M, Fay and Onondaga Road, Syracuse, New York, a paper writing in the form of a check drawn upon the Treasurer of the United States with a falsely made and forged endorsement "Anne V. Maykovich" on the back thereof, the said check, with the falsely made and forged endorsement on the back thereof, being of the following tenor and description:

United States Treasury Check
No. 49,651,687 over Symbol 3045
dated 09-01-73, payable to
Anne V. Maykovich
133 North St.
Auburn, N. Y.

in the amount of \$28.90

and LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN, and MILDRED COPES then knew the said endorsement to have been falsely made and forged.

All in violation of Title 18, U.S.C., Sections 495 and 2.

Indictment 74-CR-26.

COUNT XVII

THE GRAND JURY FURTHER CHARGES:

On or about the 4th day of September, 1973, in the Northern District of New York, LOIS ANN EUDELL, VALERIE LYNN BROWN, and MILDRED COPES, with intent to defraud the United States, did utter and publish as true to the Marine Midland Bank, Port Byron, N. Y., a paper writing in the form of a check drawn upon the Treasurer of the United States with the falsely made and forged endorsements "John J. Maykovich" and "Mary Maykovich" on the back thereof, the said check, with the falsely made and forged endorsements on the back thereof, being of the following tenor and description:

United States Treasury Check
No. 49,651,686 over Symbol 3045
dated 09-01-73, payable to
John J. Maykovich
133 North Street
Auburn, N. Y.,

in the amount of \$221.50

and LOIS ANN EUDELL, VALERIE LYNN BROWN, and MILDRED COPES then knew the said endorsements to have been falsely made and forged.

All in violation of Title 18, U.S.C., §§495 and 2.

A TRUE BILL

James M. Sullivan, Jr.
By Arthur A. Chalenski, Jr.

Asst UNITED STATES ATTORNEY

Michael O. Krawcheck
FOREMAN OF THE GRAND JURY

INDICTMENT 74-CR-69.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

BARBARA BROOME

Criminal No. 74-CR- 69

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

On or about the 3rd day of August, 1973, in the Northern District of New York, BARBARA BROOME, having knowledge of the actual commission by LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON and VALEKIE LYNN BROWN of a felony cognizable by a court of the United States, that is, (1) the stealing, taking and abstracting from and out of authorized depositories for mail matter, and (2) for the purpose of receiving sums of money from the United States and from its officers and agents, the falsely making and forging of endorsements on the back of paper writings in the form of checks drawn upon the Treasurer of the United States, and (3) with intent to defraud the United States, the uttering and publishing as true, paper writings in the form of checks drawn upon the Treasurer of the United States with falsely made and forged endorsements on the back thereof, wilfully did conceal the same and did not, as soon as possible, make known the commission of said felony to any Judge or other person in civil or military authority under the United States.

In violation of Title 18, United States Code, Section 4.

COUNT II

THE GRAND JURY FURTHER CHARGES:

On or about the 1st day of September, 1973, in the Northern District of New York, BARBARA BROOME, having knowledge of the actual commission by LOIS ANN EUDELL, LINDA LEE ADLE, ELIZABETH JOY HODSON, VALERIE LYNN BROWN and MILDRED COPEs of a felony

Indictment 74-CR-69.

cognizable by a court of the United States, that is, (1) the stealing, taking and abstracting from and out of authorized depositories for mail matter, and (2) for the purpose of receiving sums of money from the United States and from its officers and agents, the falsely making and forging of endorsements on the back of paper writings in the form of checks drawn upon the Treasurer of the United States, and (3) with intent to defraud the United States, the uttering and publishing as true, paper writings in the form of checks drawn upon the Treasurer of the United States with falsely made and forged endorsements on the back thereof, wilfully did conceal the same and did not, as soon as possible, make known the commission of said felony to any Judge or other person in civil or military authority under the United States.

In violation of Title 18, United States Code, Section 4.

A TRUE BILL

/s/

FOREMAN OF THE GRAND JURY

JAMES M. SULLIVAN, JR.
United States Attorney for
the Northern District of New York

By /s/ ARTHUR A. CHALENSKI, JR.

Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

ARREST WARRANT — Broome.

Warrant for Arrest of Defendant (Rev. 7-52)

Cr. Form No. 12

United States District Court FOR THE

Northern District of New York

UNITED STATES OF AMERICA

v.

Barbara Broome

No. 74CR26

To: any U. S. Marshal or any authorized arresting Officer

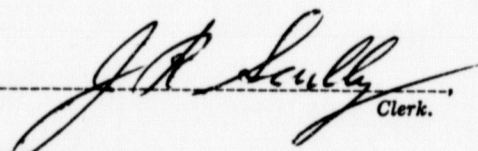
You are hereby commanded to arrest Barbara Broome and bring her
~~forthwith~~ before the United States District Court for the Northern District of New York
 next to be held after her apprehension
~~in the city of~~ to answer to an Indictment charging her with
 conspiracy, and forging and uttering U. S. Treasury checks

in violation of T18:USC Sec 371,495,1708,2

Dated at Utica, New York

on February 19 19 74

Bail fixed at \$ by Magistrate

By  Clerk.
 Deputy Clerk.

RETURN

District of

ss

Received the within warrant the day of 19 and executed same.

By _____

¹ Insert designation of officer to whom the warrant is issued, e. g., "any United States Marshal or any other authorized officer"; or "United States Marshal for _____ District of _____"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

NOTICE OF MOTION FOR SUPPRESSION HEARING
74-CR-26.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No. 74-CR-26

- v -

LOIS ANN EDELL, LINDA LEE ADLE,
ELIZABETH JOY HODSON, VALERIE LYNN
BROWN, MILDRED COPES, and
BARBARA BROOME,
Defendants.

NOTICE OF MOTION FOR
SUPPRESSION HEARING

PLEASE TAKE NOTICE that upon the annexed affidavit of
CHARLES W. AVERY, ESQ., duly sworn to the 25th day of March, 1974,
and upon the Indictment herein, the undersigned will move this
Court at a Special Motion Term thereof to be held at the Federal
Court House in the City of Auburn, New York, on the 9th day of
April, 1974 at 10:00 o'clock in the forenoon of said day, or as
soon thereafter as counsel can be heard, for an Order granting a
pretrial hearing to determine the issue of admissibility of a
statement alleged to have been made by defendant Broome on
February 21, 1974, and for such other and further relief as to
the Court may seem just and proper.

Dated: March 25th, 1974.

Yours, etc.,

Charles W. Avery

CHARLES W. AVERY
Attorney for Defendant
Office and P.O. Address:
188 Genesee Street
P.O. Box 684
Auburn, New York 13021
Tel No. 315-253-0309

TO: JAMES M. SULLIVAN, JR.
United States Attorney
Northern District of New York
Federal Building
Syracuse, New York 13201

AFFIDAVIT OF CHARLES W. AVERY IN SUPPORT
OF MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No. 74-CR-26

- vs -

LOIS ANN EUELLE, LINDA LEE ADLE,
ELIZABETH JOY HODSON, VALERIE LYNN
BROWN, MILDRED COPEL, and
BARBARA BROOME,

AFFIDAVIT IN SUPPORT
OF MOTION FOR
SUPPRESSION HEARING

Defendants.

STATE OF NEW YORK)
) SS.:
COUNTY OF CAYUGA)

CHARLES W. AVERY, being duly sworn, deposes and says:

1. I am the attorney for defendant Barbara Broome, having been appointed by the Court to represent her as an indigent person on February 21, 1974.

2. That defendant Broome was indicted jointly with five other persons in a single indictment of seventeen counts. Defendant Broome is charged in Count I jointly with other defendants in a conspiracy count, and in Counts VI, VII, XXII, XXIII and XVI, which allege substantive violations. Defendant Broome has been arraigned and has plead not guilty. At the time of arraignment the Court directed motions to be made returnable on April 9, 1974.

3. That at the time of arraignment your deponent requested that copies of all statements made by the defendant Broome to law enforcement officials be presented to your deponent. A copy of a statement alleged to have been made by defendant Broome on February 21, 1974 was furnished to your deponent by the government on March 23, 1974. A copy of said statement is attached hereto marked Exhibit A and made a part hereof.

4. That defendant Broome and your deponent believe that the statement is inadmissible in evidence against the defendant and

Affidavit of Charles W. Avery in Support of Motion.

request a pretrial hearing to determine its admissibility; that the statement was alleged to have been taken at 1:15 p.m. on February 21, 1974, following the arrest of the defendant on the warrant issued on the indictment herein and immediately prior to the presentation of the defendant to the magistrate and the assignment of your deponent as counsel for the defendant.

Charles W. Avery

CHARLES W. AVERY

Sworn to before me this
25th day of March, 1974.

Barbara Ann Mitchell

Notary Public

Exhibit A — Statement attached to Avery Affidavit.

COUNTY OF CAYUGA

EXHIBIT "A"

CITY OF AUBURN

BEFORE MAKING THIS STATEMENT, I SIGNED "WARNING AND
 CONSENT TO SPEAK" FORM, SSF NO. 1737, BEFORE SPECIAL
 AGENT A.G. DENHAGSE, U. S. SECRET
 SERVICE.

I, Barbara Broome, reside at Apt. 146, Bldg. 2, Woodbrook
 Apts. Auburn, NY and wish to state that I knew that
 Lois Endell, Valerie Braun, Linda Adle and Jay
 Hodson, prior to 9/1/73 had stolen, forged and
 cashed checks from the mail but felt it was
 not my concern so I didn't report them.
 on the morning of 9/1/73^b, Valerie Braun, and Lois
 Endell came to my house in Melrose village and wanted
 to borrow my car. We discussed it and I said "you

I HAVE READ OVER THE FOREGOING STATEMENT CONSISTING
 OF 2 PAGES, AND I HAVE BEEN GIVEN AN OPPOR-
 TUNITY TO MAKE CORRECTIONS. ALL THE FACTS CONTAINED
 HEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Barbara Broome

Witnessed:

Time 1:15 P.M.

Date Feb. 21, 1974

Garett J. DeYon

Sworn to before me this 21st day of February 1974

Authority to Administer Oath:
 Title 5, Section 303, USC

Witnessed:

A. George DenHagse

Witness:

[Signature]
 FOREMAN
 INSPECTION

EXHIBIT "A"

Exhibit A — Statement attached to Avery Affidavit.

girls are up to no good don't let my car be seen and I don't want my car involved in nothing or any crazy doing." Lois said "we will pay you for the use of your car."

Later on 9/1/73 Stephanie, ^{BB} ~~and~~ my daughter, and I discussed why my car had not been brought back yet. Stephanie said that I should call the police to show that I was not involved in any crazy doing by Brown, Endell, Capes, Hardman and Ade. I thought about doing it for my own protection but did not.

When Lois returned my car on the evening of 9/1/73, she paid me \$50 cash. Valerie Brown also promised to buy me an outfit because I was so upset with my car being late. When they returned my car I said "you girls have been stealing checks I don't want to know nothing." I left.

I know these girls have been stealing and forging checks ~~and~~ ^{MBB} but felt that I should not tell on them. I know that I have done wrong and I am sorry.

Barbara Broome

Time 1:15 P.M.

Date Feb. 21, 1974

NOTICE OF MOTION FOR SUPPRESSION HEARING
74-CR-69.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff)	Criminal No. 74-CR-69
vs.)	NOTICE OF MOTION FOR
BARBARA BROOME,)	SUPPRESSION HEARING
Defendant)	

PLEASE TAKE NOTICE that upon the annexed affidavit of CHARLES W. AVERY, ESQ., duly sworn to the 20th day of May, 1974, and upon the Indictment herein, the undersigned will move this Court at a Special Motion Term thereof to be held at the Federal Court House in the City of Utica, New York, on the 30th day of May, 1974 at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an Order granting a pretrial hearing to determine the issue of admissibility of a statement alleged to have been made by defendant Broome on February 21, 1974, and for such other and further relief as to the Court may seem just and proper.

Dated: May 20, 1974

Yours, etc.

Charles W. Avery

CHARLES W. AVERY
Attorney for Defendant
Office and P.O. Address:
188 Genesee Street
P.O. Box 684
Auburn, New York 13021
Tel No. 315 253-0309

TO: JAMES J. SULLIVAN, JR.
United States Attorney
Northern District of New York
Federal Building
Syracuse, New York 13201

UNITED STATES OF AMERICA,
Plaintiff

vs.

BARBARA BROOME,
Defendant

)
)
)
)
)
)
)
)
)

Criminal No. 74-CR-69

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUPPRESSION HEARING

CHARLES W. AVERY, being duly sworn, deposes and says:

1. I am the attorney for defendant Barbara Broome, having been appointed by the Court to represent her as an indigent person on February 21, 1974.
2. That the defendant was indicted on two counts of Misprison of Felony. Defendant Broome has been arraigned and has plead not guilty. At the time of arraignment the Court directed motions to be made returnable on May 27, 1974, but thereafter changed the return date for motions to May 30, 1974.
3. A copy of a statement alleged to have been made by defendant Broome on February 21, 1974 has been furnished to your deponent by the government. A copy of said statement is attached hereto, marked Exhibit A, and made a part hereof.
4. That defendant Broome and your deponent believe that the statement is inadmissible in evidence against the defendant and request a pretrial hearing to determine its admissibility; that the statement was alleged to have been taken at 1:15 P.M. on February 21, 1974, following the arrest of the defendant on the warrant issued on Indictment No. 74-CR-26, and immediately prior to the presentation of the defendant to the magistrate and the assignment of your deponent as counsel for the defendant

Affidavit of Charles W. Avery in Support of Motion.

in connection with that indictment.

Charles W. Avery

CHARLES W. AVERY

Sworn to before me this

20th day of May, 1974.

Barbara Ann Mitchell

Notary Public

BARBARA ANN MITCHELL
NOTARY PUBLIC, State of New York
No. 80-7973630
Qualified in Westchester County
Commission Expires March 30, 1976

Exhibit A — Statement attached to Avery Affidavit.

[The Statement attached hereto is the same as printed
herein supra at page 72].

HEARING MEMORANDUM.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,)	
vs.)	<u>HEARING</u>
)	<u>MEMORANDUM</u>
LOIS ANN EUDELL, LINDA LEE ADLE,)	
ELIZABETH JOY HODSON, VALERIE LYNN)	
BROWN, MILDRED COPES, and BARBARA)	
BROOME,)	
Defendant.)	Criminal No. 74-CR-26

UNITED STATES OF AMERICA,)	
Plaintiff,)	
vs.)	
)	
BARBARA BROOME,)	
Defendant.)	Criminal No. 74-CR-69

This memorandum is in opposition to the Motions for Suppression Hearing in each of the above-identified cases dated March 25, 1974 and May 20, 1974.

The defendant BARBARA BROOME was indicted in a 17 count indictment on February 20, 1974, charging her with violations of Title 18, United States Code, Sections 2, 371, 495, and 1708 involving the stealing, forging and uttering of U. S. Treasurer's checks and the conspiracy to do such acts. Following indictment, a bench warrant for the arrest of the defendant Broome was issued and on February 21, 1974, she was arrested at about 11:35 A.M. Broome was then transmitted to the Bureau of Criminal Investigation Offices of the New York State Police, processed for fingerprints and interrogated by agents of the Secret Service and Postal Inspectors. Prior to interrogation, Broome was advised of her constitutional rights and executed a waiver of such rights on Secret Service Form No. 1737 at 12:08 P.M. Following the waiver, Broome gave a statement. The

Hearing Memorandum.

statement was in writing and was executed by Broome at 1:15 P.M. on February 21, 1974. The motions are to suppress this statement. A copy of each of the Warning and Consent to Speak form and the Statement is attached hereto.

Following the giving of this statement and at about 2:30 P.M. on February 21, 1974, the defendant Broome was presented to the Magistrate in Auburn, N. Y. Counsel was appointed at such time and Broome was released on her own recognizance.

THE DEFENDANT BROOME KNOWINGLY
AND INTELLIGENTLY WAIVED HER
CONSTITUTIONAL RIGHTS

It is well established that a defendant may knowingly and intelligently waive his rights under the Fifth Amendment, Miranda v. State of Arizona, (384 U.S. 436, 86 S.Ct. 1602 (1966)), and Sixth Amendment, Escobedo v. Illino 378 U.S. 478, 84 S.Ct. 1758 (1964) and United States v. Calabro, 467 F.2d 973 (2nd Cir. 1972). The efficacy of the waiver depends upon the particular facts and circumstances surrounding the case, including the background, experience and conduct of the accused. In the instant case the defendant Broome was employed by the 4-H Division of Cornell University as a caseworker, and was 45 years old at the time of giving the statement. The defendant had the capacity to make an intelligent choice and exercised that choice in favor of waiving her constitutional rights.

THE CONFESSION GIVEN BY THE
DEFENDANT BROOME WAS VOLUNTARILY
GIVEN AND IS ADMISSABLE IN EVIDENCE

Title 18, United States Code, Section 3501(b) provides that all of the circumstances surrounding the giving of the confession shall be taken into consideration in determining the issue of voluntariness, and that five factors shall be included in this determination:

Hearing Memorandum.

(1) The time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; (5) and whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

With reference to the first factor specified in 3501(b),

Section 3501(c) provides:

"[A] confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of a law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate ... if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within 6 hours immediately following his arrest or other detention"

The use of the term "arraignment" in the first factor in Section 3501(b) and "defendant" in 3501(c) show that Congress intended such section to apply following the formal institution of criminal proceedings pursuant to indictment.

With reference to the five factors, the statement was given within 2 hours following arrest, and the presentment to the Magistrate was given about 3 hours following arrest. The proof will show that the defendant knew the nature of the offense with which she was charged, that she was advised as provided in factors 3 and 4, and that she waived the assistance of counsel.

See UNITED STATES v. MARRERO, 450 F.2d 373 (2d Cir. 1971)

Hearing Memorandum.

UNITED STATES V. MASSIAH, 377 U.S. 201,
84 S.Ct. 1199 (1964) IS INAPPLICABLE
TO THE INSTANT CASE.

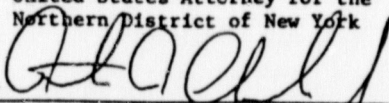
United States v. Massiah, 377 U.S. 201, 84 S.Ct. 1199 (1964) was one of the Supreme Court decisions predating Escobedo v. State of Illinois, *supra*. The defendant has cited Massiah in support of his contention that a statement following indictment without counsel is per se inadmissible. This contention has been rejected by the Second Circuit in United States v. Barone, 467 F.2d 247 (2d Cir. 1972). In Barone, as in the instant case, the defendant claimed that certain inculpatory statements taken from him after his indictment in the absence of counsel were improperly admitted in evidence. The Second Circuit in Barone stated as follows:

"In Massiah, the Supreme Court held that inculpatory statements deceptively elicited from an indicted defendant in the absence of counsel were inadmissible. The circumstances of the present case are quite different from the circumstances of Massiah. Here there was not only no deception but an express waiver of counsel signed by Barone ..."

See also United States v. Cohen, 358 F.Supp. 112 (S.D. N.Y. 1963).

For all of the above reasons, the statement given by the defendant Broome on February 21, 1974, followed a knowing and intelligent waiver of counsel and was voluntary in all respects. Accordingly, the motion to suppress the statement should be denied.

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